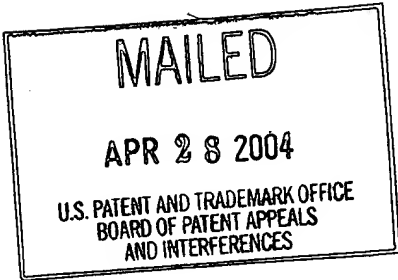


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM J. FURNAS

Appeal No. 2003-0296
Application No. 09/318,249

ON BRIEF

Before HAIRSTON, LEVY, and SAADAT, Administrative Patent Judges.
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 and 2. Claims 3-7 have been indicated by the examiner (page 4) as allowable if rewritten in independent form (Paper No. 11, mailed December 3, 2001).

BACKGROUND

Appellant's invention relates to a container inspection machine using a source having spatially, cyclically and continuously varying intensity. An understanding of the

invention can be derived from a reading of exemplary claim 1,
which is reproduced as follows:

1. A machine for inspecting the wall of a bottle comprising
a conveyor for supporting a bottle at an inspection station,
the inspection station including
a CCD camera on one side of the conveyor having a camera
image,
a light source, having an illumination area, on the other
side of the conveyor, for imaging the bottle on said CCD camera
image,
means for defining on said illumination area light
intensities varying between a minimum brightness level that will
permit the identification of a light blocking defect and a
maximum brightness level, the brightness level varying spatially,
cyclically, and continuously at a rate of change which is less
than a rate of change that would be identified as a defect,
computer means for analyzing said camera image by comparing
neighboring pixels to determine the rate of change in brightness
level to identify defects where the rate of change exceeds a
defined value.

The prior art references of record relied upon by the
examiner in rejecting the appealed claims are:

Juvinall et al. (Juvinall)	4,601,395	July 22, 1986
Ishikawa et al. (Ishikawa)	4,924,083	May 8, 1990

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being
anticipated by Juvinall.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Juvinall in view of Ishikawa.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 13, mailed July 8, 2002) for the examiner's complete reasoning in support of the rejections, and to appellant's brief (Paper No. 10, filed October 1, 2001) and supplemental brief (Paper No. 12, filed April 11, 2002) for appellant's arguments thereagainst. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered. See 37 CFR 1.192(a).

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the

rejections and arguments in rebuttal set forth in the examiner's answer.

Upon consideration of the record before us, we affirm. We begin with the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Juvinall.

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). The examiner's position is set forth on pages 3-5 of the examiner's answer. Appellant asserts (brief, pages 4 and 5) that as shown in figure 2, Juvinall uses a single conventional light bulb, with a single intensity. It is argued (brief, page 5, and see also supp. brief, page 2) that

Intensity levels varying between a minimum brightness level and a maximum brightness level can not be defined on that light source.

It is further argued (supp. brief, pages 2 and 3) that

Juvinall discloses a filter which receives the light from the illumination device and defines a light pattern having varying intensities on the filter. That is the prior art. The examiner erroneously argues that this filter defines these light variations on the light source. To the contrary, Juvinall defines these light variations on the filter. There is no light variation on the light source in Juvinall. The claimed invention requires that the variation in intensities be created "on said illumination area". Juvinall does not do this and the section 102 rejection is erroneous.

The examiner responds (answer, page 6) that

As shown from Figures 2 and 4 of Juvinall et al. The filter (50) causes the illumination area (dotted lines of Figure 2) of the light source to have a variety of intensities. That is, the light source (52) illuminates through the filter (50), generating an illumination area of the light source on the other side of the filter, which varies as claimed (see Figure 4).

We begin with the issue of claim construction. Analysis of whether a claim is patentable over the prior art begins with a determination of the scope of the claim. The properly interpreted claim must then be compared with the prior art. Claim interpretation must begin with the language of the claim itself. See Smithkline Diagnostics, Inc. v. Helena Laboratories Corp., 859 F.2d 878, 882, 8 USPQ2d 1468, 1472 (Fed. Cir. 1988). Accordingly, we will initially direct our attention to appellant's claim 1 to derive an understanding of the scope and content thereof. The general claim construction principle that limitations found only in the specification of a patent or patent application should not be imported or read into a claim must be followed. See In re Priest, 582 F.2d 33, 37, 199 USPQ 11, 15 (CCPA 1978). One must be careful not to confuse impermissible imputing of limitations from the specification into a claim with the proper reference to the specification to determine the meaning of a particular word or phrase recited in a claim. See

E.I. Du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 1433, 7 USPQ2d 1129, 1131 (Fed. Cir.), cert. denied, 488 U.S. 986 (1988).

What we are dealing with in this case is the construction of the limitations recited in the appealed claims. As stated by the court in In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) "[t]he name of the game is the claim." Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification are not to be read into the claims. In re Etter, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985).

We find that the claim language "a light source, having an illumination area" and

means for defining on said illumination area light intensities varying between a minimum brightness level that will permit the identification of a light blocking defect and a maximum brightness level, the brightness level varying spatially, cyclically, and continuously at a rate of change which is less than a rate of change that would be identified as a defect,

does not require that the light source produce light of varying intensities. Nor does the claim language provide for a light source that does not have an illumination area. The claim language "a light source, having an illuminate area" is clear, and requires that the illumination area be part of the light

source, since the light source has the illumination area. Moreover, the "means for ..." language of claim 1 refers to the varying brightness levels created by the timers 20 for the vertical rows (figure 2) and the single controller for operating eight rows (figure 3).

From our review of Juvinall, we do not agree with appellant (brief, page 4) that Juvinall uses a single conventional light bulb, but rather we agree with the examiner (answer, page 5) that light source 40 of Juvinall comprises a plurality of incandescent lamps disposed in three columns (col. 4, lines 27-29). In addition, from our review of claim 1, we find that claim 1 does not require that the varying levels of intensity are defined on the light source, but rather that the varying levels of intensity are defined on the illumination area of the light source. Appellant does not dispute that Juvinall discloses the claimed varying of the levels of intensity, but asserts that it is provided by the filter of Juvinall and not the illumination area of the light source (supp. brief, page 2, last paragraph). We do not agree with appellant (id.) that the filter of Juvinall receives light from the illumination device, but rather we find that the filter of Juvinall receives light from the light source

52, via diffuser plate 48 (figure 2). We observe that appellant's specification (page 4) discloses

Calculations based upon the actual performance of the illumination method, in this case, L.E.D./diffuser combination, will determine the method of calculating corrections to produce the desired spatially cyclically continuously varying intensity between the extremes of dark and light intensity source.

From this disclosure of appellant's we find that it is the combination of the LEDs and the diffuser which relate to the method of calculating corrections to produce the desired spatially cyclically continuously varying intensity between the extremes of dark and light intensity source. Thus, the issue is whether the filter of Juvinall is part of the illumination area of the light source. Although not brought to our attention by either the appellant or the examiner, we find, sua sponte, that Juvinall discloses (col. 4, lines 50-56) that

Within light source 40, which is illustrated in plan view in FIG. 1 and in side elevation of FIG. 2, a diffuser plate 48 and an intensity filter plate 50 are positioned to intercept and direct light energy from a source 52 of illumination through the sidewall of a container 22 and through lens 46 onto camera 42.

From this disclosure of Juvinall, we find that the filter 50 is located within light source 40. Because the filter, which provides the varying intensities, is within light source 40, we find that the filter is in the illumination area of the light

source of Juvinall. In addition, we observe that the structure disclosed by appellant for carrying out the claimed "means for . . ." of claim 1 is different from the filter of Juvinall. As to whether filter 50 of Juvinall constitutes the same or equivalent structure for carrying out the claimed function of varying intensities, we note that appellant has not raised the issue of 35 U.S.C. § 112, sixth paragraph, notwithstanding the fact that the limitation is written in means-plus-function language and appellant's disclosed structure is the timers and controller, which are not the same as the filter of Juvinall. Nevertheless, because appellant has not raised the issue of 35 U.S.C. § 112, sixth paragraph, we find that the means of Juvinall are equivalent to the structure disclosed by appellant, since the claimed function is performed.

From all of the above, we find that the prima facie case of anticipation of claim 1 by Juvinall has not been successfully rebutted by appellant. The rejection of claim 1 under 35 U.S.C. § 102(b) is therefore affirmed.

We turn next to the rejection of claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Juvinall in view of Ishikawa. The examiner's position (answer, page 5) is that Ishikawa discloses a plurality of lamps disposed in three columns, but

does not disclose that the lights are LEDS. To overcome this deficiency of Juvinall, the examiner turns to Ishikawa for a teaching of using a plurality of LED rows for a bottle inspection device. The examiner asserts (id.) that

it would have been obvious to a person of ordinary skill in the art at the time the invention was made use a plurality of LED rows as the light source of the device of Juvinall et al. in view of Ishikawa et al. to provide more efficient illumination and to reduce operating costs.

Appellant asserts (brief, page 5) that

Claim 2 defines the light source as a plurality of rows of L.E.D.s which per claim 1 define light source areas having different intensity levels. Juvinall teaches a single light bulb -The obvious conversion would be to an L.E.D. light source having a uniform intensity.

As we stated, supra, claim 1 does not require light source areas having different intensity levels, but rather that the varying intensity levels are defined on the illumination area of the light source. Also as stated, supra, Juvinall does not disclose the use of a single bulb, but rather a plurality of lamps disposed in three columns. From the disclosure of the prior art, we find that an artisan would have been motivated, for the reasons advanced by the examiner, to use LEDs instead of incandescent lamps for the columns of lamps provided.

CONCLUSION

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136 (a).

AFFIRMED

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